

FILE COPY

Supreme Court,

FILED

DEC 15 1947

CHARLES H. HARRIS, JR.
CLERK

Supreme Court of the United States

OCTOBER 1947 TERM.

JOSEPH ESTIN,
Petitioner,

AGAINST

GERTRUDE ESTIN,
Respondent.

No. 139.

**Petition for Leave to File a Petition for a Rehearing of
Petitioner's Petition for Writ of Certiorari to the
Court of Appeals of the State of New York, and Peti-
tion for Such Rehearing.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Your Petitioner respectfully prays that he be granted permission to file a Petition for a rehearing of the decision made by this Court on the 13th day of October, 1947, denying his Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

**Reason for Filing This Petition for Leave to File a
Petition for a Rehearing.**

The 25 days allowed by Rule 33 of the Rules of this Court expired on the 8th day of November, 1947, and hence the Petition for a rehearing may be filed only with leave of this Court.

**Reason Why the Petition for a Rehearing of the Decision
of This Court Made October 1947 Should Be
Permitted to Be Filed.**

This Court on November 24th, 1947, granted a Petition for a Writ of Certiorari to the Court of Appeals of the State of New York in *Kreiger v. Kreiger*, No. 371, October Term 1947, which presented the same question of constitutional law as does this cause.

The Petition herein presented to this Court the question as to whether the Court of Appeals of the State of New York erred in holding that the provisions for support of the respondent included in the judgment of separation entered in the New York Supreme Court was not superseded by the subsequent valid divorce decree obtained by the petitioner against the respondent in the State of Nevada. The New York Court of Appeals held that, as the respondent here had not been personally served with process within the jurisdiction of the Nevada Court and had not appeared in said action, her rights to alimony under the New York Separation Decree had not been affected, and that the obligation of the Petitioner to pay the moneys provided in said separation decree continued notwithstanding that the petitioner had obtained a valid divorce in Nevada, and that Article IV, Section 1, of the United States Constitution did not require a different decision. This Court denied the Petition for a Writ of Certiorari to the said Court of Appeals of the State of New York on October 13, 1947.

While the Petition for a Writ of Certiorari was pending before this Court, counsel for the Petitioner herein, on the 26th day of September, 1947, filed with this Court in the said *Kreiger* case a Petition to review the judgment of the Court of Appeals of the State of New York upon a similar state of facts, and presenting the same question of constitutional law. In *Kreiger v. Kreiger* the New

York Court of Appeals had affirmed a judgment for arrears of alimony granted by the Supreme Court of the State of New York accruing under a separation decree subsequent to the date on which Mr. Kreiger obtained his valid divorce in Nevada upon the same method of service of process. The Court of Appeals in *Kreiger v. Kreiger* wrote no opinion, but in its remittitur stated that it was affirmed "on the authority of *Estin v. Estin* (296 N. Y. 308)," and this Court, on the 24th day of November, 1947, granted Mr. Kreiger's Petition for a Writ of Certiorari to the Court of Appeals of the State of New York.

Inasmuch as the questions of constitutional law presented by the record in *Kreiger v. Kreiger* are identical with the questions of law presented in *Estin v. Estin*, we believe that justice to Mr. Estin warrants a Writ of Certiorari to the Court of Appeals of the State of New York in this case as well as in the case of *Kreiger v. Kreiger*.

Should this Court in *Kreiger v. Kreiger* reverse the judgment of the Court of Appeals of the State of New York upon the ground that full faith and credit to Mr. Kreiger's divorce decree in Nevada compelled a recognition by the New York Courts that the alimony provisions of the separation decree of the New York Supreme Court had been superseded by the divorce decree in Nevada, and that Mr. Kreiger was not liable for any alimony payments accruing after the entry of his divorce decree in that state, it would be most unjust and illogical to leave Mr. Estin, who is legally in the same situation, obligated to continue to pay the alimony awarded by the separation judgment obtained by Mrs. Estin.

It would be proper, we believe, that both causes be argued together.

WHEREFORE your Petitioner prays:

1. That he be granted permission to file a Petition for a rehearing of the Petition for a Writ of Certiorari to

the Court of Appeals of the State of New York in this cause;

2. That the order denying said petition, made the 13th day of October, 1947, be vacated;

3. That this Petition be considered a Petition for such rehearing and be received as such;

4. That upon such rehearing the prayer of the Petition for a Writ of Certiorari to the Court of Appeals of the State of New York, as set forth in his original Petition as filed herein, be granted; and

5. That petitioner have such other relief as may be just.

Respectfully submitted,

JAMES G. PURDY,
ABRAHAM J. NYDICK,
Counsel for Petitioner.

We do hereby certify that this Petition is presented in good faith, and not for delay, and that said Petition is restricted to the grounds therein set forth.

JAMES G. PURDY,
ABRAHAM J. NYDICK,
Counsel for Petitioner.

